This was the basis of the decision of Hatch, J. (in 18 App. Div. Rep. 341), and we think it a sound one. The maxim, *Sic utere uo.*, etc., applied to the facts, harmonizes the American cases. The English cases refuse to apply this doctrine to percolating waters where the rights of riparian owners in a defined water-course are not involved. *Chaseman* v. *Richards*, 7 H. L. 349; *Bradford* v. *Pickles*, 1895 Appeal Cases 587.

Civilization must move from absolute individual rights and absolute ownership to correlative rights and ownership reasonably restricted. While, therefore, we approve the decision of the case upon the facts found by the verdict, we question the propriety of stating an "absolute right of enjoyment" in a water-course, unless it is used in the sense of vested or individual. *U. S.* v. *Northway*, 17 Fed. Rep. 65. The plaintiff had rights in his stream, the city of Brooklyn had rights in the percolations of its land. When it was established that these percolations fed almost exclusively the plaintiff's stream, their rights became correlative and the city was bound to show that its acts were a reasonable use of its land with due care.

GEOGRAPHICAL NAMES AS TRADE-MARKS.

In *Canal Co.* v. *Clark*, 13 Wall. 311, we find the general law as to the use of geographical names for trade-marks laid down that no one can apply the name of a geographical district to a well known article of commerce, and obtain thereby such an exclusive right to the application as to prevent others inhabiting the district or dealing in similar articles coming from the district, from truthfully using the same designation. Until lately no exception to this general rule has been recognized as established law in this country. The United States Circuit Court for the Southern District of New York, however, has recently handed down a decision in the case of *American Waltham Watch Co.* v. *Sandman*, 96 Fed. 330, that considerably modifies the views formerly held on this point. In this case the defendant began the manufacture of watches in Waltham under the name of "Columbia Watch Company" and stamped his watches with the name of this fictitious corporation and the words, "Waltham, Mass." His object in locating at this place was for the avowed purpose of using the name "Waltham" in order that he might thereby reap the benefits of the labor of the original Waltham Watch Company, who had succeeded in making the "Waltham watch" known the world over. In a suit in equity for an accounting and an injunction, a decree was entered in favor of the plaintiff. The court in reaching this conclusion recognizes that a geographical name may acquire a secondary meaning that entitles it to the protection of the law. By long use and association with the manufacture of an article it may come to be a means of designating that article and as such acquire the value and invoke the protection accorded to a trade-mark. We find this point arising in the case of *Sexio* v. *Provezende*, L. R. I. Ch. 192, but not until the case of *Montgomery* v. *Thompson*, 1891 App. Cases 217, was it very fully discussed. The Massachusetts Supreme Court followed this latter case in *Waltham Watch Co.* v. *United States Watch Co.*, 53 N. E. 141, and the reasoning there of Judges Knowlton and Holmes seems to have had great influence upon the circuit court in the present case. The case before us is important as tending to establish a line between meritorious claims that have come into conflict. The principle that one can not appropriate a geographical name as against any one else manufacturing a similar article in the same place is a just one. But should even a right as strong as this be allowed to cover an intentional fraud on the public? It is the protection of the public that is aimed at. Not being in a favorable position to protect itself, the court considers its protection a duty incumbent upon it, and that a greater injustice would be done if it did not afford such protection than if it merely set limits upon a well established rule of law. The element of intentional fraud upon the public is the feature that the courts have grasped in order to set this limit, and a stronger one it would be hard to

find. As the law reaches a higher development, the establishment of limits to general principles become its predominant feature, and the present case is simply an illustration of this tendency.

CONSTITUTIONAL INTERPRETATION—INHERITANCE TAX.

That an inheritance tax is constitutional has long since been affirmatively decided by the great weight of authority. But the opinion handed down by the court in *In re Stanford's Estate*, 58 Pac. 462, is not only instructive, but settles for California, at least, that such tax, though it never came into the possession of the State, but was due the State, belongs to the State; and decides that a legislative act exempting individuals and certain private corporations from the payment of this tax is void, as being in direct conflict with the State constitution, prohibiting the Legislature from making a gift of any public money or thing of value. (Overruling *In re Stanford's Estate*, 54 Pac. 259.) The facts in this case were as follows: Leland Stanford by his will left large legacies in favor of the Leland Stanford Junior University and to certain of his nephews and nieces. A few days previous to Stanford's death a legislative enactment went into effect which provided for the payment of a collateral inheritance tax on property devised to certain classes. The tax so imposed was to become due and payable at decedent's death. In April, 1896, the Superior Court of San Francisco made an order on Stanford's executrix, requiring her to make payment of the tax due on the collateral bequests under the will. From this order an appeal was taken. In 1897 the Legislature amended the original act by exempting from such tax certain persons and classes (under which certain legatees under the Stanford will were included), and provided that such exemptions "shall apply to all property which has passed by will, succession or transfer since the approval of the act of which this act is amendatory, except in cases where taxes have been paid."

On the hearing of the appeal (54 Pac. 259) it was held that such appeal must be determined in accordance with the amendment, and that inasmuch as the amendment in question extended to every part of the State and applied to every person within a class, the same was in effect a general law and therefore did not conflict with the constitutional provision which in terms applied only to local or special laws. In the case under review the court, however, reaches a different conclusion, and hold that though in form the act in question may not be local or special legislation, yet the framers of the constitution, and the people who adopted it, did not hedge about the Legislature with such restraints in the matter of conferring favors, or making gifts or donations by special and local legislation, and at the same time leave the door wide open for similar abuses to enter under the guise of general legislation.

A contention was made that as the State had not come into possession of the tax, there could be no violation of such constitutional provision, inasmuch as the State could not give what it had never possessed. The fallacy of such contention is apparent when considered from the standpoint that it is only by virtue of statute that an heir is entitled to receive any of his ancestors' estate, and that it is in the power of the Legislature to provide that the whole or only a portion shall go to the heirs or other beneficiaries upon the death of the ancestor. This being so, and as all the property of a decedent must vest in some one at his death, if the law provides that only a certain portion can go to the heirs or other beneficiaries, the remainder being reserved to the State as a tax on the right of succession, it of necessity follows that such remainder must vest in the State at the same time that the other property vested in the heirs or beneficiaries. The State, therefore, has a present fixed right of future enjoyment to such a tax, and this is property or a thing of value belonging to the State. It is not possession alone, but the right to possess, which constitutes ownership. Inasmuch as the State's right to such a tax after it is due is property, it seems apparent that any legislation which releases such right would be in conflict with a constitutional provision forbidding the releasing or extinguishing of the indebtedness, liability or obligation to the State.

It would also seem to the average mind a pernicious piece of legislation to exempt those who had not paid the tax and not to exempt those who had complied with the law, as it would appear to set a premium upon the non-fulfillment of an obligation and the imposing of a penalty upon those who obeyed such a statute.